CW Building Maintenance *and* Service Employees International Union, SEIU Local 87. Case 20–CA–259459

October 22, 2020

DECISION AND ORDER

BY MEMBERS KAPLAN, EMANUEL, AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that CW Building Maintenance (the Respondent) has failed to file an answer to the complaint. Upon a charge and an amended charge filed by Service Employees International Union, Local 87 (the Union), on April 22 and June 12, 2020,[1] respectively, the General Counsel issued a complaint and notice of hearing on July 7 against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On August 4, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on August 7, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

RULING ON MOTION FOR DEFAULT JUDGMENT

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by July 21, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated July 23, advised the Respondent that unless an answer was received by July 30, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in San Francisco, California (the Respondent's facility), and has been engaged in the business of providing janitorial services to office buildings.

During the 12-month period ending June 30, the Respondent, in conducting its operations, purchased and received at its San Francisco, California facility goods valued in excess of $50,000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Michelle Redding held the position of the Respondent's owner and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees working under the provisions of the Collective Bargaining Agreement between the Union and the San Francisco Maintenance Contractors Association in effect from August 1, 2016 through July 31, 2020.

Since about February 24, 2013, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from August 1, 2016, to July 31, 2020 (the Agreement).

At all times since February 24, 2013, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about March 1, 2020, the Respondent has failed to remit unit employees' dues to the Union in the time frames set forth in Section 3.11 of the Agreement.

Since at least November 1, 2019, the Respondent has failed to pay unit employees the progression wage rate set forth in Section 8.2 of the Agreement.

Since about January 1, 2020, the Respondent has failed to pay unit employees' wages by voucher check showing the total number of hours worked, the rate of pay, and an

[1] All dates are 2020 unless otherwise indicated.

itemized list of deductions as set forth in Section 8.4 of the Agreement.

Since about January 1, 2020, the Respondent has failed to pay unit employees weekly or biweekly as set forth in Section 8.5 of the Agreement.

Since about January 1, 2020, the Respondent has failed to provide unit employees a payroll check showing their accrued vacation and sick leave hours as set forth in Section 8.5 of the Agreement.

Since at least November 1, 2019, the Respondent has failed to pay unit employees double the proper wage rate as a result of its failure to pay the proper wage rate, as set forth in Section 8.8 of the Agreement.

The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining and the Respondent engaged in the conduct without the Union's consent.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing terms and conditions of employment of its unit employees, we shall order it to pay employees the unpaid progression wage rate set forth in Section 8.2 of the Agreement, to pay employees double the wage rate, as set forth in Section 8.8 of the Agreement, as a result of its failure to comply with Section 8.2, and to make the affected employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct. All amounts due employees shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), and *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Further, we shall order the Respondent to compensate the employees for any adverse tax consequences of receiving a lump-sum backpay award, and to file with the Regional Director for Region 20, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016).

In addition, having found that, since January 1, 2020, the Respondent violated Section 8(a)(5) and (1) by unilaterally ceasing to pay employees by voucher check as set forth in Section 8.4 of the Agreement, to pay employees weekly or biweekly, and to provide employees a payroll check showing their accrued vacation and sick leave hours as set forth in Section 8.5 of the Agreement, we shall order the Respondent to rescind those unilateral changes.

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit employees' union dues to the Union in the time frames set forth in Section 3.11 of the Agreement, we shall also order it to make the Union whole for all dues that would have been paid but for the Respondent's unlawful conduct by remitting to the Union the dues deducted from about March 1, 2020, until the expiration of the Agreement[2] and to make employees whole for any expenses ensuing from the Respondent's failure to make the remittances as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), the amounts to be computed in the manner set forth in *Ogle Protection Service*, above, with interest as prescribed in *New Horizons*, above, and *Kentucky River Medical Center*, above. We shall further order the Respondent to return to employees any dues deducted but not remitted to the Union after the expiration of the Agreement, with the amounts and interest calculated in the manner set forth above.[3]

ORDER

The National Labor Relations Board orders that the Respondent, CW Building Maintenance, San Francisco, California, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Service Employees International Union, Local 87 (the Union) as the exclusive collective-bargaining representative of employees in the following appropriate unit by failing to pay unit employees contractually-required wages in accordance with the August 1, 2016—July 31, 2020 Agreement. The bargaining unit is:

> All employees working under the provisions of the Collective Bargaining Agreement between the Union and the San Francisco Maintenance Contractors Association in effect from August 1, 2016 through July 31, 2020.

[2] See *Valley Hospital Medical Center, Inc., d/b/a Valley Hospital Medical Center,* 368 NLRB No. 139 (2019).

[3] See *Betteroads Asphalt, LLC*, 369 NLRB No. 114 (2020).

(b) Failing and refusing to pay unit employees by voucher check, to pay employees weekly or biweekly, and to provide employees a payroll check in accordance with the August 1, 2016—July 31, 2020 Agreement.

(c) Failing and refusing to remit unit employees' dues to the Union in accordance with the August 1, 2016—July 31, 2020 Agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay unit employees all contractually required wages in accordance with the August 1, 2016—July 31, 2020 Agreement, in the manner set forth in the remedy section of this decision.

(b) Rescind the changes in terms and conditions of employment for unit employees that were unilaterally implemented on January 1, 2020, in the manner set forth in the remedy section of this decision.

(c) Make the Union whole by remitting to the Union dues that were deducted from employees' paychecks but not remitted from March 1, 2020, until the expiration of the Agreement on July 31, 2020, with interest, in the manner set forth in the remedy section of this decision.

(d) Return to employees any dues deducted but not remitted to the Union after the expiration of the August 1, 2016—July 31, 2020 Agreement in the manner set forth in the remedy section of this decision.

(e) Make unit employees whole for any expenses ensuing from the Respondent's failure to remit union dues, with interest, in the manner set forth in the remedy section of this decision.

(f) Compensate employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 20, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for each employee.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Post at its San Francisco, California facilities copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 1, 2019.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 22, 2020

Marvin E. Kaplan, Member

William J. Emanuel, Member

[4] If the facility involved in this proceeding is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in this proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees return to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Service Employees International Union, Local 87 (the Union) as the exclusive collective-bargaining representative of employees in the following appropriate unit by failing to pay unit employees contractually-required wages in accordance with the August 1, 2016—July 31, 2020 Agreement. The bargaining unit is:

> All employees working under the provisions of the Collective Bargaining Agreement between the Union and the San Francisco Maintenance Contractors Association in effect from August 1, 2016 through July 31, 2020.

WE WILL NOT fail and refuse to pay you by voucher check, weekly or biweekly, and provide you with a payroll check in accordance with the August 1, 2016—July 31, 2020 Agreement.

WE WILL NOT fail and refuse to remit your dues to the Union in accordance with the August 1, 2016—July 31, 2020 Agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL pay you all contractually required wages in accordance with the August 1, 2016—July 31, 2020 Agreement, plus interest.

WE WILL rescind the changes to your terms and conditions of employment that were unilaterally implemented on January 1, 2020.

WE WILL remit to the Union dues that were deducted from your paychecks and that have not been remitted from March 1, 2020 until the expiration of the August 1, 2016—July 31, 2020 Agreement, with interest.

WE WILL return to you any dues that we deducted from your paychecks but did not remit to the Union after the August 1, 2016—July 31, 2020 Agreement expired, plus interest.

WE WILL make you whole for any expenses ensuing from our failure to remit dues to the Union, plus interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 20, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

CW BUILDING MAINTENANCE

The Board's decision can be found at www.nlrb.gov/case/20-CA-259459 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.